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BOOK REVIEWS.

LIABILITY OF RAILROADS TO INTERSTATE EMPLOYEES.. By Philip J. Doherty of the Boston Bar. Little, Brown & Company, Boston, 1911. Pp. 371.

The profession, in these days of specialties, no longer demands broad dissertations on the law in general, but concise and specific statements of the history, theory and status of the law on a particular subject. The latter is what Mr. Doherty endeavors to furnish. His is the only book on this subject which has yet come to our attention.

Unlike many modern text-writers, the author does not content himself with a mere statement of the latest decisions by the courts on the different points open for construction. The most interesting feature of his book is his discussion of the legal principles underlying the doctrine of Assumption of Risk and the Fellow Servant Rule. At the very outset he disputes the soundness, viewed from a logical standpoint, of the common law decisions establishing these well known principles. In the course of the first fifty pages he proceeds, with admirable clearness, to demonstrate their fallacy, thus preparing the reader's mind for an unconditional acceptance of the provisions of the Employers' Liability Acts, which abolish these doctrines from the law as applied to Interstate Employees. Particularly worthy of commendation is his discussion on pages 45-57 of the six reasons advanced by the supporters of the Risk of Employment Rule.

We wish we could say as much for the remainder of Mr. Doherty's book. Portions of the next five chapters in Part I are serviceable and instructive, (particularly Sections 17, 18, 19 and 31) but Chapter IV, entitled "When is a Railroad Engaged in Interstate Commerce," does not show at all the same care and thought evidenced by the first three chapters. The conclusions at the end of this chapter are sound, but the citations throughout are loosely put together and in a number of cases are rather misleading than helpful.

For instance on pp. 77-78, as sustaining the position that an intrastate road participating in interstate traffic is amenable to Federal regulation, the author cites two decisions by the Supreme Court, (37 & 154 U. S.) eleven Circuit Court decisions, and nine decisions of state courts. Neither of the Supreme Court decisions cited bears on the point except very indirectly, although this question has been expressly decided in a number of other cases, typical of which is *Louisville & N. R. Co. v. Behlmer*, 175 U. S. 648, 662.

Mr. Doherty then cites, as *contra* to the preceding cases, three Supreme Court decisions all later than those in his first list, one being from 209 U. S. An examination of these cases will show that no one of them is in fact *contra*. One, the case in 204 U. S., he proceeds clearly to distinguish himself. The *Armour* case, (209 U. S.) he leaves entirely without comment. It is difficult to imagine how this case could reasonably be construed to bear at all on the point under discussion, but if it does it should appear to sustain the opposite conclusion from that for which it is cited.

Part II, pages 132-275, is devoted solely to an exhaustive argument in favor of the constitutionality of the Employers' Liability Act of 1908. As three cases involving this specific question have already been argued before the Supreme Court, and will probably be decided before this review goes to print, thus settling the question beyond dispute, so lengthy a discussion would not seem to be of much practical use at the present time. If the Court holds the Act constitutional, there will be no need of further discussion of the question, while if it sustains the Connecticut Court in holding it unconstitutional, a large portion of the remainder of the book, in addition to Part II, would become of historic interest merely. The cases referred to are *Northern Pacific R. Co. v. Babcock*, New York, N. H.

& *H. R. Co. v. Walsh and Moudou v. New York N. H. & H. R. Co.* The last case was decided by the Supreme Court of Connecticut at the same time as the much discussed *Hoxie* case. It is difficult to understand why this decision and the appeal to the Supreme Court are not mentioned by Mr. Doherty, although the appeal was taken more than two years ago.

The remainder of the book, pages 276-316, deals with the Federal Safety Appliance Acts, the proper construction of which is directly within the scope of the book, since by the Employers' Liability Act the railroad is deprived of the defences of Assumption of Risk or Contributory Negligence if it appears that the violation of a safety appliance statute contributed to the injury or death of the employee. This is a most important branch of Mr. Doherty's subject and many cases have been decided by the Federal Courts which would warrant discussion, classification, and criticism by him. On page 276 he gives a list of sixty-seven decisions in actions for injuries or death, construing the Safety Appliance Acts. We find only twenty-seven of these cases discussed or commented on by him elsewhere. It is unfortunate that the author did not devote to the important and unsettled questions involved in these cases some of the time and space used by him in connection with the constitutionality of the Act.

The index, a most important feature of a legal text-book, while passable, is not at all thorough, and does not show the result of very painstaking work.

On the whole, the book is interesting and worth having. It is to be regretted that all parts of it are not so carefully prepared or reliable as the author's evident ability might, with the addition of a little more time, readily have made them.

H. S. D., Jr.

THE INDIVIDUALIZATION OF PUNISHMENT. By Raymond Saleilles, Professor of Comparative Law in the University of Paris. Translated from the Second French edition by Mrs. Rachael Lzold Jastrow. Little Brown & Co. Boston. 1911.

This is the fourth, and the most valuable, contribution yet made by the Committee on Translations of the American Institute of Criminal Law and Criminology in its work in making available to the American student the work of the great foreign authorities on criminology.

Our author's work divides itself into four topics: The history of punishment; a review of the different schools of criminology; the doctrine of responsibility; and a plea for individualization in punishment. In many respects the review of the schools of criminology is more enlightening than a study of the books in which the theories of the schools themselves are set forth, for these theories are treated with eminent fairness and at the same time the reader is given an acute critique of them.

The chapter on the history of punishment is most interesting; not because of any new facts presented, the author does not undertake to present any new facts, but because of the analysis of the facts to show the theory underlying them. From these facts he concludes that primitive punishment was primarily subjective; it was the crime that was punished, not the criminal. There is absent not only individualization, but the conception of moral culpability; there is no theory of punishment, the penalty is for compensation merely. It is the Ecclesiastical law that brings in the idea of responsibility and its resultant culpability.

Very acute and interesting also is his analysis of the reforms of the eighteenth century as represented by the work of Baccaria, in Italy, Bentham, in England and Feuerbach, in Germany, by which under the guise of a philosophic theory they harked back, in effect, to the primitive conception that underlay the *Weregild*.

The different schools of criminology are taken up in turn, and their